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SCULLY SCOTT MURPHY & PRESSER, PC
400 GARDEN CITY PLAZA
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OFFICE OF PETITIONS

In re Application of
Harano et al.
Application No. 10/634,449
Filed: August 5, 2003
Attorney Docket No. 14095Z

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: DECISION ON PETITION
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This is a decision on the "PETITION TO CORRECT FILING DATE UNDER 37 C.F.R. 1.53," filed August 11, 2004. Petitioners request that the Office accord the above-identified application a filing date of August 5, 2003, with inadvertently omitted figures 18-20 considered part of the original application disclosure by virtue of an incorporation by reference statement.

Application papers in the above-identified application were filed on August 5, 2003. On November 3, 2003, the Office of Initial Patent Examination mailed applicants a "Notice of Omitted Items in a Nonprovisional Application." Applicants were advised that the application had been accorded a filing date of August 5, 2003; however, figures 18-20 described in the specification appeared to have been omitted from the application.

On November 17, 2003, applicants responded, supplying figures 18 - 20. No preliminary amendment requesting entry of this material accompanied this submission. The Office responded according the application a filing date of November 17, 2003, the later date on which the omitted figures were supplied¹. In response to the according of the November 17, 2003 filing date, applicants filed the instant petition.

The petition is **GRANTED** to the extent indicated herein.

¹ This was in error to the extent that no petition fee was charged and no declaration referring to the later filing drawing figures accompanied this submission. Without these items, the application should have retained a filing date of August 5, 2003, without figures 18-20.

MPEP 201.06(c) states that:

If a continuation or divisional application as originally filed is entitled to a filing date despite the omission of a portion of the prior application(s), applicant will be permitted to add the omitted material by way of an amendment provided a statement was included in the application as originally filed that incorporates by reference the prior application(s). If the application as originally filed includes a proper incorporation by reference of the prior application(s), an omitted specification page(s) and/or drawing figure(s) identified in a "Notice of Omitted Item(s)" may be added by amendment provided the omitted item(s) contains only subject matter in common with such prior application(s). In such case, applicant need not respond to the "Notice of Omitted Item(s)." Applicant should submit the amendment adding the omitted material prior to the first Office action to avoid delays in the prosecution of the application. See MPEP § 601.01(d) and § 601.01(g).

Petitioner states that the instant application is a continuation of application No. 09/727,876 and claims benefit to Japanese Application No. H11-368189, which is incorporated by reference.

Absent the Office's changing of the filing date from August 5, 2003 to November 17, 2003, the instant petition would have been dismissed as inappropriate. (Pursuant to MPEP 201.06(c), only the filing of the preliminary amendment for consideration by the examiner would have been necessary).

Given the basis for granting this petition, no petition fee is required and no fee has been charged.

A preliminary amendment to amend the specification to include figures 18-20 should be filed prior to the first Office action on the merits to avoid further delay in the prosecution of this application.

The application is being returned to the Office of Initial Patent Examination for correction of the filing date to August 5, 2003, using the papers received in the Office on that date.

Telephone inquiries related to this decision may be directed to the undersigned at (703) 305-0309.



Nancy Johnson
Senior Petitions Attorney
Office of Petitions